

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the Gas Market Activities of Southern California Gas Company, San Diego Gas and Electric, Southwest Gas, Pacific Gas and Electric, and Southern California Edison and their impact on the Gas Price Spikes experienced at the California Border from March 2000 through May 2001.

Investigation 02-11-040
(Filed November 21, 2002)

**ASSIGNED COMMISSIONER'S RULING
DENYING MOTION OF SOUTHERN CALIFORNIA GAS COMPANY AND
SAN DIEGO GAS AND ELECTRIC COMPANY TO DISQUALIFY
COMMISSIONER LYNCH OR, IN THE ALTERNATIVE, TO CONDUCT
VOIR DIRE REGARDING COMMISSIONER LYNCH'S BIAS**

On November 18, 2004, Southern California Gas Company and San Diego Gas and Electric Company (collectively "SoCalGas") filed a motion seeking to disqualify me from participating in this proceeding based on the allegation that I am biased against SoCalGas. Alternatively, SoCalGas asks to be permitted to conduct *voir dire* in order to explore my alleged bias. On December 1, 2004, The Utility Reform Network (TURN) filed a response urging denial of the motion.

While I take issue with the material facts alleged in SoCal Gas' moving papers, even if the allegations were true, they would not provide a basis for my disqualification from this proceeding. In order to prevail on its motion, SoCal Gas must show that I harbor an actual bias against the moving parties. SoCal Gas has not met this standard.

The videotaping of Mr. Schavrien's remarks and his subsequent lawsuit do not demonstrate an actual bias against SoCal Gas. My involvement in the videotaping of his statements arose from my concern about industry lobbying at industry-sponsored conferences, not any personal animus against SoCalGas. The KCBS reports to which I contributed addressed this larger public policy issue and were not focused on SoCalGas. Indeed, the portion of the KCBS broadcast that relates to Mr. Schavrien's remarks does not even identify Mr. Schavrien or his employer. At most, the fact that Mr. Schavrien objects to the videotaping and has filed a lawsuit shows a personal dispute between Mr. Schavrien and myself; it does not support a claim of actual bias against SoCalGas.

With respect to statements I have made to the press related to SoCalGas or its affiliates, the motion ignores the context for those statements. My remark to KCBS regarding the "sons of Enron" related to merchant generators generally, not specifically to SoCalGas or any of its affiliates. My comments regarding the Sempra/Calpine contracts to build two power plants in San Diego only expressed my views on a matter on which the Commission had already voted. The fact that I voted against the position advocated by an affiliate of SoCalGas cannot be evidence of bias; otherwise, every vote against a party's position could be used to support a later claim of bias by that party. Accepting SoCalGas' argument would enable parties to cripple the Commission through disqualification motions. My statement to the *San Diego Tribune* that is quoted in SoCalGas' motion related to a claim filed by the CPUC and other state agencies against numerous entities, including an affiliate of SoCalGas. My comment only explained my perception that lawyers for San Diego Gas and Electric did not get involved in the CPUC investigation because their affiliate was one of the targets

of the investigation. None of these statements provide any support for the claim that I am biased against the moving parties.

Mr. Schavrien's multiple-level hearsay recitation of an alleged conversation I had with a Southern California Edison lobbyist relates to a conversation that never took place. Even if the hearsay statements occurred or were accurate, they would not manifest a bias against Mr. Schavrien's employers.

With respect to the schedule of the proceeding, SoCalGas has shown nothing out of the ordinary in the procedural rulings in this case. Certainly, none of the rulings they cite demonstrate actual bias against SoCalGas.

Accordingly, SoCalGas' motion to disqualify is denied. SoCalGas' alternative motion to conduct *voir dire* is also denied because the authorities SoCalGas cites in support of this extraordinary request are factually and legally inapposite. Moreover, SoCalGas has failed to make out a *prima facie* case that I harbor actual bias against the moving parties.

Therefore, **IT IS RULED THAT**, the motion is denied.

Dated December 15, 2004, at San Francisco, California.

/s/ LORETTA LYNCH

Loretta Lynch
Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioner's Ruling Denying Motion Of Southern California Gas Company And San Diego Gas And Electric Company To Disqualify Commissioner Lynch Or, In The Alternative, To Conduct *Voir Dire* Regarding Commissioner Lynch's Bias before the Commission on all parties of record in this proceeding or their attorneys of record.

Dated December 15, 2004, at San Francisco, California.

/s/ EVELYN P. GONZALES

Evelyn P. Gonzales

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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